

In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO THE “TOPICS)
OR SUBJECT AREAS FOR IDAHO BAR) ORDER
EXAMINATION QUESTIONS” AND “BAR)
EXAMINATION GRADING STANDARDS)
AND PROCEDURES”)
_____)

The Board of Commissioners of the Idaho State Bar having presented proposed changes to the TOPICS OR SUBJECT AREAS FOR IDAHO BAR EXAMINATION QUESTIONS and the BAR EXAMINATION GRADING STANDARDS AND PROCEDURES, and the Idaho Supreme Court having reviewed and approved the recommendations;

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Idaho State Bar TOPICS OR SUBJECT AREAS FOR IDAHO BAR EXAMINATION QUESTIONS and the BAR EXAMINATION GRADING STANDARDS AND PROCEDURES, as they appear in the Idaho State Bar Desk Book and on the Idaho State Bar website be, and they are hereby, amended as follows:

Topics or Subject Areas for Idaho Bar Examination Questions

By order of the Idaho Supreme Court, Bar Examination questions are limited to the following topics or subject areas of the law:

1. Federal Civil Procedure
2. Conflict of Laws
3. Constitutional Law
4. Contracts
5. Business Organizations (Agency & Partnership, Corporations and Limited Liability Companies)
6. Ethics

7. Uniform Commercial Code (Articles I, II, III and IX)
8. Family Law
9. Criminal Law and Procedure
- ~~10. Equitable Remedies (Equity)~~
- ~~11~~10. Evidence
- ~~12~~11. Real Property, ~~including Water Rights~~
- ~~13~~12. Torts
- ~~14~~13. Wills, Estates, and Trusts (Decedent's Estates and Trusts; Future Interests)
- ~~15~~14. Community Property

Bar examination questions on the above topics or subject areas must be of a general nature, not requiring specific knowledge of any variance of the Idaho law, except for the following topics which **must be** answered in accordance with Idaho law:

- ◆ Articles I, II, III, and IX of the UCC
- ◆ ~~Water Law~~
- ◆ ~~Wills and Intestate Succession~~ Estates and Trusts (Decedent's Estates and Trusts; Future Interests) (U.P.C.)
- ◆ Family Law and Community Property Law

~~With regard to civil procedure questions, applicants will be expected to answer using either the Idaho Rules of Civil Procedure or the Federal Rules of Civil Procedure. With regard to ethics questions, applicants will be expected to answer using either the Idaho Rules of Professional Conduct or the ABA Model Rules of Professional Conduct and:~~ With regard to evidence questions, applicants will be expected to answer using either the Idaho Rules of Evidence or the Federal Rules of Evidence. In all such cases, applicants will be required to indicate which rules they are applying.

Topics or Subject Areas for Idaho Bar Examination Questions

Idaho Essay Questions	Multistate Essay Questions	Multistate Bar Exam
Business Organizations (Agency & Partnership, Corporations and Limited Liability Companies)	Business Organizations (Agency & Partnership, Corporations and Limited Liability Companies)	
Civil Procedure	<u>Federal</u> Civil Procedure	
Community Property		
Conflict of Laws	Conflict of Laws	
Constitutional Law	Constitutional Law	Constitutional Law
Contracts	Contracts (<i>includes UCC Article II</i>)	Contracts
Criminal Law and Procedure	Criminal Law and Procedure	Criminal Law and Procedure
Ethics		
Equitable Remedies (Equity)		
Evidence	Evidence	Evidence
Family Law	Family Law	
Torts	Torts	Torts
Real Property, including Water Rights	Real Property	Real Property
UCC Articles I, II, III & IX	UCC Articles I, II, III & IX	
Wills, Estates and Trusts (Decedent's Estates and Trusts, Future Interests)	Wills, Estates and Trusts (Decedent's Estates and Trusts, Future Interests)	

Prior to taking the exam or within the next two Multistate Professional Responsibility Examination administrations after successfully completing the exam, an applicant must take the MPRE and receive a minimum scaled score of 85. *Idaho Bar Commission Rules 201(4) & 203(4)*. For MPRE application packets and further information, contact the National Conference of Bar Examiners, MPRE Application Department, PO Box 4001, Iowa City, Iowa, 52243. Phone: (319) 337-1287

Bar Examination Grading Standards and Procedures

Approved by the Idaho Supreme Court - July 24, 1974

Amended November 13, 1989, March 15, 1991, June 10, 1998 and June 15, 2001

"The Bar examination should test the applicant's ability to reason logically, to analyze accurately, the problems presented to him and to demonstrate a thorough knowledge of the fundamental principles of law and their application. The examination should not be designed primarily for the purpose of testing information, memory or experience." (*National Conference of Bar Examiners: Canon 16*)

III. GENERAL STANDARDS FOR THE ASSIGNMENT OF GRADES

The Rules Governing Admission to Practice Law in Idaho state that a grade of not less than 70% of the highest possible grade shall be a passing grade on an examination. (IBCR 210(h)(1)) Since the total possible grade range is from 0-100, the effect of a very bad answer must be clearly understood.

~~Scores~~ Grades are assigned on a scale of 0-100, although most ~~scores-grades~~ will fall between 40-100. A ~~score-grade~~ of "0" hurts an applicant more than two ~~scores-grades~~ of "100" help. It is numerically possible to fall 70 points below passing (a grade) on one bad answer, but that applicant could not possibly gain more than 60 points above the "passing" mark of 70 with *two* 100 point answers. Therefore, as a practical matter, most grades should fall within the range of 40-100. As a result, an applicant who makes a reasonable attempt to answer a question but who obviously has not written a passing answer will not be so severely penalized for that bad answer that he has little chance to ever recover. These grades should be assigned in five (5) point increments (this applies to grades both above and below 70). The following standards should be applied in assigning grades to essay and MPT examination answers:

Essay Grading Standards

- 90-95-100** A ~~score-grade~~ of 90-100 demonstrates a **high degree of competence** in response to the question. While not reserved for a perfect answer, a 90-100 answer demonstrates a full understanding of the facts, a complete recognition of the issues presented and the applicable principles of law, and a good ability to reason to a conclusion. A 90-100 answer is clear, concise and complete.
- 80-85** A ~~score-grade~~ of 80-85 demonstrates **clear competence** in response to the question. An 80-85 answer demonstrates a fairly complete understanding of the facts, recognizes more of the issues and applicable law, and reasons fairly well to a conclusion.

- 70-75** A ~~score-grade~~ of 70-75 demonstrates **competence** in response to the question. A 70-75 answer demonstrates an adequate understanding of the facts, an adequate recognition of most of the issues and law, and adequate ability to reason to a conclusion.
- 60-65** A ~~score-grade~~ of 60-65 demonstrates **some competence** in response to the question but is inadequate. A 60-65 answer demonstrates a weak understanding of the facts, misses significant issues, fails to recognize applicable law, and demonstrates inadequate reasoning ability.
- 50-55** A ~~score-grade~~ of 50-55 demonstrates only **limited competence** in response to the question and is seriously flawed. A 50-55 answer demonstrates little understanding of the facts or law and little ability to reason to a conclusion.
- 40-45** A ~~score-grade~~ of 40-45 demonstrates **fundamental deficiencies** in understanding facts and law. A 40-45 answer shows virtually no ability to reason or analyze.
- 0** A grade of "0" ~~answer~~ should be assigned only when the applicant makes no attempt to answer the question, or when the answer shows no reasonable attempt to identify or address the issues raised by the question.

In connection with assignment of very high ~~scores-grades~~, it should be emphasized that the ~~score grade~~ of 100 is not reserved for a "perfect" answer; it is not reserved even for a single "best" answer, which a grader may encounter to a particular question or on a particulate examination. A grade of 100 may be assigned if the grader believes that the applicant has done an exceptional job considering the time and circumstances.

If the applicant shows some understanding of the problem and has made some serious attempt to grapple with it, it would be most surprising to find that the applicant has not earned **at least** a 40. An applicant who has never taken a course in the subject but displays analytical ability should be able to earn credit for the attempted answer.

While there is no arbitrary "floor" in the grading system, the 40-100 practical "grading range" previously mentioned should be kept in mind for the reasons stated above.

MPT Grading Standards

- 90-95-100** A grade of 90-95-100 ~~answer~~ demonstrates a **high degree of competence** in response to the assigned lawyering task. Although not reserved for a perfect answer, a ~~score grade~~ of 90, 95 or 100 shows that the applicant fully understands both the practical and academic aspects of the task, is able to assimilate and digest the relevant factual and legal materials, incorporate them coherently into a well reasoned and well written product, and write a complete and responsive answer in the allotted time.

- 80-85** A grade of 80-85 answer demonstrates **clear competence** in response to the assigned lawyering task. It shows that the applicant has a fairly complete understanding of the practical and academic aspects of the task, is able to assimilate and digest most of the relevant factual and legal materials, incorporate them coherently into a logically well reasoned and well written product, and write a useful and responsive answer in the time allotted.
- 70-75** A grade of 70-75 answer demonstrates **competence** in response to the lawyering task assigned. It shows that the applicant somewhat understands the practical and academic aspects of the task and is able to assimilate and digest enough of the relevant factual and legal materials to allow him/her to incorporate them into a satisfactory, albeit less than complete, exposition of the task in the time allotted.
- 60-65** A grade of 60-65 answer demonstrates **some competence** in response to the lawyering task assigned but is **inadequate**. It shows that the applicant has a weak understanding of the task, tends not to appreciate the practical aspects, and is barely able to assimilate and digest the factual and legal materials in a useful written product in the time allotted. That is, it is an answer that you, as a supervising attorney, would find sufficiently lacking in the content you intended when you made the assignment.
- 50-55** A grade of 50-55 answer demonstrates only **limited competence** in response to the lawyering task assigned and is **seriously flawed**. It shows that, although the applicant has attempted to grasp the factual and legal materials, he/she has only rudimentary understanding of the task and how to accomplish it.
- 40-45** A grade of 40-45 answer demonstrates **fundamental deficiencies** in response to the lawyering task assigned. It shows that the applicant has a complete lack of understanding of the task or how to accomplish it and is unable to analyze the factual and legal materials and incorporate them into even a minimally acceptable written product.
- 0** A grade of "0" answer should be assigned only when the applicant makes no attempt to answer the question.

IV. GRADING PROCEDURES AND GUIDELINES

- 5. REEVALUATION PROCEDURE.** There shall be a reevaluation of some of the failing examination papers in accordance with the following guidelines and procedure:

- a. The Commissioners of the Idaho State Bar shall appoint a Reevaluation Team of three or more reviewers from the members of the Bar with varying years of experience as graders, but the reviewers of the Reevaluation Team shall not be graders of the bar examination to which they are assigned. After all of the questions on a bar examination have been graded, the Commissioners, or their delegated committee, shall total the same for each examinee and determine the average grade for each examinee on all of his answers to the examination.

In accordance with the rules of the Supreme Court, those receiving an average grade of 70% or more of the highest possible grade for that examinee shall be certified to the Supreme Court as having passed the examination.

- b. The Commissioners shall thereafter submit to the reviewers, for reevaluation under the guidelines herein set forth, all examination papers of examinees who failed to obtain an average of 70 points per answer on the examination who:
1. Received an average grade per question on the entire examination of $66 \frac{2}{3}$ or more but less than 70, or
 2. Have been certified by the Supreme Court or Commissioners for review by the Reevaluation Team.
- c. The Reevaluation Team shall review the examination papers submitted to it in the following manner:
1. Each examinee's answers to all examination questions shall be reassembled in one exam package in numeric order before delivery to the Reevaluation Team, together with the grades assigned upon the initial grading. The reviewer shall also receive and consider the ~~score~~ grade received by the applicant on the Multistate Bar Examination.
 2. The reviewers of the Reevaluation Team shall read each question of the examination, the model or suggested answer, and the outline of the graders as to the issues and points of law sought to be raised by the question.
 3. No reviewer of the team shall form any opinion as to the merits of an examination paper until all of the answers have been read. The reviewer shall then review and reevaluate the examination paper as a *whole* under all of the guidelines set forth in these instructions and make a single determination as to whether the entire examination, not any individual answer, merits a passing or failing grade. In making the pass/fail determination, the reviewer shall apply the following criteria: As a whole, whether the applicant's answers demonstrate competence in response to the questions, including an adequate understanding of the facts, an adequate recognition of most of the issues and the law, and an ability to reason to a conclusion.

4. The examination paper to be reviewed shall be read by one reviewer in total, that is the answers to each of the questions shall be read consecutively from the beginning to the end of the examination. The reviewer shall then determine whether the examination paper merits a passing or failing grade, applying the criteria set forth in subsection 3 above, and shall indicate a "pass" or "fail" decision on this reevaluation report together with any comments.
 5. After the first reviewer has read the examination paper being reviewed, a second reviewer shall read the examination paper in accordance with the foregoing guidelines, without seeing or knowing the decision and comments of the first reviewer, and shall indicate a "pass" or "fail" grade on the reevaluation report together with any comments. If both of the first two reviewers concur in a "pass" or "fail" grade the same shall constitute the grade on review.
 6. If the first two reviewers do not concur in a "pass" or "fail" grade, the examination paper, the original grades, and the "pass" or "fail" determinations of the first two reviewers, together with their comments, shall be given to a third reviewer who shall likewise read all the answers and make a "pass" or "fail" determination which shall constitute the final grade on review.
- d. Upon conclusion of the reevaluation of the grading as required by this rule, the Commissioners shall certify the results thereof to the Supreme Court.

6. **SCORING ESSAY AND PERFORMANCE QUESTIONS.** Following is the process for calculating scores on the essay questions:

- a. Graders use a 100-point scale for assigning initial scores on all essays as outlined in the "General Standards for the Assignment of Grades Scores" found on pages 5 and 6.
- b. Scores assigned by the graders are then weighted to reflect the amount of testing time allotted to answer the questions.
- c. Weighted essay scores are scaled to the MBE to ensure consistent interpretation across test administrations.
- d. The scaled total essay score and the scaled MBE score each represent one half of the final combined score.
- e. A passing score on the Bar Examination is a score of not less than 70% of the highest possible score. *Idaho Bar Commission Rule 210(h)(1).*

IT IS FURTHER ORDERED that this Order and the amendments shall be effective July 1, 2010.

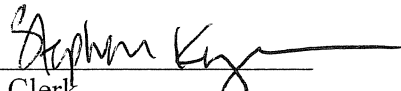
IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Rules.

DATED this 19 day of September, 2009.

By Order of the Supreme Court


Daniel T. Eismann, Chief Justice

ATTEST:


Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.

WITNESS my hand and the Seal of this Court 9/22/09

STEPHEN W. KENYON Clerk

By:  Deputy